

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA
4

5 ROBERT LINZY BELLON,

6 Petitioner,

7 v.

8 WARDEN BRIAN WILLIAMS, *et al.*,

9 Respondents.
10

Case No. 3:19-cv-00118-RCJ-WGC

**ORDER GRANTING
MOTION TO DISMISS
(ECF NO. 15)**

11
12 This action is a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2241,
13 by Robert Linzy Bellon, a Nevada prisoner. The respondents have filed a motion to
14 dismiss. The Court will grant that motion, dismiss this action, and deny Bellon a
15 certificate of appealability.

16 Bellon was convicted of murder after a jury trial and was sentenced to two
17 consecutive sentences of life in prison without the possibility of parole. See Amended
18 Judgment of Conviction, Exh. 1 (ECF No. 16-1). The events that were the subject of
19 Bellon's conviction occurred before Bellon turned eighteen years old. After Bellon's
20 conviction, the Nevada legislature enacted NRS § 213.12135, which, as it applies to
21 Bellon, provides:

22 Notwithstanding any other provision of law ... a prisoner who was
23 sentenced as an adult for an offense that was committed when he or she
was less than 18 years of age is eligible for parole as follows:

24 * * *

25 (b) For a prisoner who is serving a period of incarceration for
26 having been convicted of an offense or offenses that
27 resulted in the death of only one victim, after the prisoner
has served 20 calendar years of incarceration, including any
28 time served in a county jail.

1 NRS § 213.12135. In his petition in this case, Bellon challenges the State's calculation
2 of his parole eligibility date under NRS § 213.12135. See Petition for Writ of Habeas
3 Corpus (ECF No. 1). Specifically, as the Court understands Bellon's argument, he
4 contends that the 20-year period described in the statute includes time incarcerated on
5 convictions other than the one for the crime that caused the death. See *id.* He asserts
6 that in not giving him credit toward the 20-year parole eligibility period for time served on
7 another conviction, the State has violated his federal constitutional rights. See *id.*

8 In their motion to dismiss (ECF No. 15), filed July 8, 2019, Respondents argue
9 that Bellon's petition is not cognizable in this federal habeas corpus action because
10 success on his claims would not necessarily result in his immediate or earlier release
11 from custody, and because it presents a question of state statutory construction, beyond
12 the scope of this federal habeas court. Bellon filed an opposition to the motion to
13 dismiss on July 18, 2019 (ECF No. 17). Respondents replied on July 25, 2019 (ECF No.
14 18).

15 In support of their first argument, Respondents cite *Nettles v. Grounds*, 830 F.3d
16 922 (9th Cir. 2016). In *Nettles*, a prisoner serving a life sentence with the possibility of
17 parole was found guilty of a disciplinary infraction, resulting in revocation of 30 days of
18 good time credits and affecting his eligibility for parole. *Nettles*, 830 F.3d at 925–26.
19 *Nettles* filed a federal habeas petition seeking expungement of the rule violation report.
20 *Id.* at 927. The Ninth Circuit held that *Nettles*' claim was not cognizable in habeas. *Id.* at
21 934–35. The court reasoned that habeas relief is not available for “probabilistic claims,”
22 *i.e.*, where success on the claims “*could potentially* affect the duration of confinement”
23 or is “*likely* to accelerate the prisoner's eligibility for parole.” *Id.* at 933–34 (internal
24 quotation marks omitted) (emphasis in original). Essentially, the court determined that
25 the claim was not cognizable in habeas because, if successful, the petitioner's claim
26 would not necessarily have resulted in his immediate or earlier release from custody. *Id.*
27 at 935. The situation in this case is much the same as that in *Nettles*. Success on
28 Bellon's claims would not necessarily lead to his immediate or speedier release from

1 custody; it would only result in earlier consideration by the parole board. Bellon's claims
2 are not cognizable in this federal habeas corpus action. The Court will grant
3 Respondents' motion to dismiss.

4 In addition, and as an alternative basis for the dismissal of this action, the Court
5 determines that Bellon's petition does not make a colorable claim of a federal
6 constitutional violation. Bellon appears to claim that the State violated his liberty interest
7 in parole consideration at a particular time. See Petition for Writ of Habeas Corpus (ECF
8 No. 1). However, the Nevada Supreme Court ruled as follows in affirming the denial of
9 Bellon's state habeas petition making the same claim:

10 Even though Bellon is serving a sentence of life without the
11 possibility of parole for a first-degree-murder conviction, NRS 213.12135
12 affords him parole eligibility because he was a juvenile at the time of the
13 offense and the offense resulted in the death of only one victim. In
14 particular, Bellon is eligible for parole on the sentence for the murder after
15 he "has served 20 calendar years of incarceration." NRS 213.12135(1)(b).
16 Interpreting that statute, NDOC appropriately concluded that Bellon was
not eligible for parole until he served 20 calendar years *on the murder conviction*. We reject Bellon's argument that the 20 calendar years he must serve before being eligible for parole under NRS 213.12135(1)(b) includes the time that he served on now-expired sentences for unrelated offenses that also were committed when he was a juvenile.

17 Order of Affirmance, Exh. 17, pp. 1–2 (ECF No. 16-17, pp. 2–3). This ruling by the
18 Nevada Supreme Court, interpreting a Nevada statute, is authoritative, and beyond the
19 scope of this federal habeas corpus action. See *Estelle v. McGuire*, 502 U.S. 62, 67–68
20 (1991) ("[I]t is not the province of a federal habeas court to re-examine state-court
21 determinations on state-law questions."); see also *Bradshaw v. Richey*, 546 U.S. 74, 76
22 (2005) ("We have repeatedly held that a state court's interpretation of state law ... binds
23 a federal court sitting in habeas corpus."). In light of the Nevada Supreme Court's
24 interpretation of NRS § 213.12135, Bellon does not have a liberty interest, under NRS
25 § 213.12135, in being considered for parole on the schedule that he suggests.

26 For these reasons, this Court will grant Respondents' motion to dismiss and will
27 dismiss this action.
28

1 The standard for the issuance of a certificate of appealability requires a
2 "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c). The
3 Supreme Court has interpreted 28 U.S.C. § 2253(c) as follows:

4 Where a district court has rejected the constitutional claims on the
5 merits, the showing required to satisfy § 2253(c) is straightforward: The
6 petitioner must demonstrate that reasonable jurists would find the district
7 court's assessment of the constitutional claims debatable or wrong. The
8 issue becomes somewhat more complicated where, as here, the district
9 court dismisses the petition based on procedural grounds. We hold as
10 follows: When the district court denies a habeas petition on procedural
11 grounds without reaching the prisoner's underlying constitutional claim, a
12 COA should issue when the prisoner shows, at least, that jurists of reason
13 would find it debatable whether the petition states a valid claim of the
14 denial of a constitutional right and that jurists of reason would find it
15 debatable whether the district court was correct in its procedural ruling.

16 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221 F.3d 1074,
17 1077-79 (9th Cir. 2000). Applying the standard articulated in *Slack*, the Court finds that
18 a certificate of appealability is unwarranted here.

19 The Court will, therefore, deny Bellon a certificate of appealability. (This does not
20 preclude Bellon from appealing, by filing a timely notice of appeal in this Court and
21 seeking a certificate of authority in the Ninth Circuit Court of Appeals.)

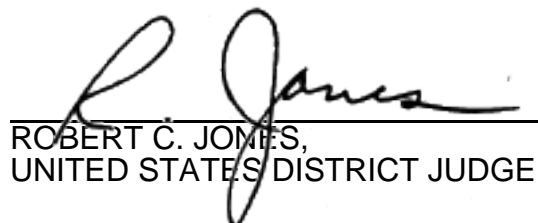
22 **IT IS THEREFORE ORDERED** that Respondents' Motion to Dismiss (ECF
23 No. 15) is **GRANTED**.

24 **IT IS FURTHER ORDERED** that this action is dismissed.

25 **IT IS FURTHER ORDERED** that Petitioner is denied a certificate of appealability.

26 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to enter
27 judgment accordingly.
28

DATED THIS 20th day of December, 2019.


ROBERT C. JONES,
UNITED STATES DISTRICT JUDGE